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QUESTION OF THE REALIZATION IN ALL COUNTRIES OF THE ECONOMIC, SOCIAL AND CULTURAL RIGHTS CONTAINED IN THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AND IN THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, AND STUDY OF SPECIAL PROBLEMS WHICH THE DEVELOPING COUNTRIES FACE IN THEIR EFFORTS TO ACHIEVE THESE HUMAN RIGHTS, INCLUDING: PROBLEMS RELATED TO THE RIGHT TO ENJOY AN ADEQUATE STANDARD OF LIVING; FOREIGN DEBT, ECONOMIC ADJUSTMENT POLICIES AND THEIR EFFECTS ON THE FULL ENJOYMENT OF HUMAN RIGHTS AND, IN PARTICULAR, ON THE IMPLEMENTATION OF THE DECLARATION ON THE RIGHT TO DEVELOPMENT

Written statement submitted by the International Federation for the Protection of the Rights of Ethnic, Religious, Linguistic and other Minorities, a non-governmental organization on the Roster

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[21 December 1991]

1. The International Federation for the Protection of Ethnic, Religious, Linguistic and other Minorities wishes to draw the attention of the Commission on Human Rights to the practice of population transfer, a human rights violation largely undebated hitherto by the Commission. A firm beginning in addressing the human rights impacts of this issue has been made by the Sub-Commission on Prevention of Discrimination and Protection of Minorities,

which has discussed population transfer under the agenda item "The realization of economic, social and cultural rights", and consequently adopted unanimously two resolutions on the subject during its forty-second and forty-third sessions in 1990 and 1991.

2. Population transfer is the practice whereby large numbers of people are moved or encouraged or forced to move, with direct government involvement or acquiescence, either into or away from a certain territory, without the free and informed consent of the people being moved or the people into whose territory they are being moved.

3. Population transfer includes the implantation of settlers and settlements in occupied countries and other territories already inhabited by a distinct people, displacement of people away from their traditional homelands, or into model villages, reservations or otherwise designated areas or a combination of both.

4. The practice of population transfer has affected and continues to affect numerous nations, peoples and population groups throughout the world. It inevitably has serious consequences for the enjoyment of basic human rights and freedoms of the affected peoples, including original inhabitants, removed and displaced people and the settlers themselves.

5. Population transfer through its practice and effects infringes on the majority of economic, social and cultural rights as well as civil and political rights laid down in both International Covenants. Furthermore, as the practice of population transfer often constitutes part of a larger policy directed towards distinct racial, ethnic or religious groups, it raises questions of discrimination and, in some cases, genocide. It constitutes a serious violation of the right to self-determination, pertaining to all peoples.

6. Population transfer poses a serious threat to the very survival of a people. Many peoples face the loss of cultural, religious or national identity or even extinction as a direct consequence of the practice and policy of population transfer.

7. Government-sponsored transfer of peoples may be motivated by strategic, military or political reasons. The larger government policy is aimed at altering irreversibly the demographic composition of disputed or occupied territories, thereby enabling effective control over these territories, and peoples and accelerating the process of assimilation of these peoples into a foreign and dominant society, often against their will. In this way, the outcome of elections and referenda will be influenced in their favour and the significance and threat of distinct peoples and population groups will be reduced.

8. For instance, the Government of Turkey forced a large part of the Kurdish population to move to the southern and western parts of Turkey, thereby reducing the threat of opposition and the expression of their own identity. The Government of Iraq has established designated villages, where the Kurdish population was transferred after their villages in strategic border areas were destroyed, thereby imposing effective control over the Kurds.

9. The Tibetan situation serves as another example. By providing incentives to millions of Chinese to move to the occupied territory of Tibet, Chinese settlers are now estimated to constitute a numerical majority in Tibet. The consequence is a society divided along racial lines, wherein Tibetans are reduced to second-class citizens who have no effective say in determining their own future. They are forced to assimilate and adopt foreign values, leading to a situation where any expression of dissatisfaction can effectively be kept under control.

10. The Government of the United Republic of Tanzania is currently encouraging the movement of Tanganyikans to Zanzibar aimed at influencing the outcome of a possible referendum on the island's future status.

11. An examination of problems resulting from past population transfers indicate the severity of the consequences of this practice and the obstacle these effects can pose to finding lasting and viable solutions to continuing situations of conflict.

12. For instance, in Ethiopia, non-Eritrean people transferred to Eritrea by the former regime are currently encouraged to leave, as the Eritreans do not want the outcome of the upcoming referendum to be determined by a majority of non-Eritrean voters.

13. In the process of seeking peaceful and lasting solutions to the situation in the Israeli occupied territories and in Western Sahara, the main obstacle is formed by the Israeli settlement policy and the past transfer of Moroccans into the Western Sahara.

14. Population transfer is often carried out in the name of development. Implantation of settlers in eastern Turkistan and Tibet by the Government of China is justified by the need to develop a backward society and people. The Indonesian transmigration of Javanese into West Papua, East Timor, the South Moluccas and Acheh and the Government-sponsored movement of Bengali settlers by the Government of Bangladesh into the Chittagong Hill Tracts provide additional examples. Development programmes sponsored by the international financial institutions are often directly responsible for the displacement of indigenous and other distinct peoples, who themselves do not benefit from these projects.

15. Population transfer is often a significant factor in the origin and deepening of ethnic conflict, contributing to instability, tension and violence and posing a threat to world peace and security.

16. The International Federation for the Protection of Ethnic, Religious, Linguistic and other Minorities would like to recommend that the Commission analyse the human rights impacts of population transfer and recognize the

relationship between population transfer and the violation of basic human rights and freedoms as laid down in international human rights instruments, in particular the two Covenants.

17. Current international developments reveal the convincing necessity of adequately addressing the complex issue of population transfer. The above-mentioned examples indicate the urgency of finding mutually satisfactory responses to these immediate and potentially dangerous situations, as well as developing an international legal consensus on the question of population transfer in general. Denying due attention to this practice may lead to increasingly unstable situations where the human rights of all persons concerned will inevitably face infringement.

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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

STATUS OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Written statement submitted by the International Federation of Action of Christians for the Abolition of Torture, a non-governmental organization on the Roster

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[8 January 1992]

1. Our world is becoming accustomed to torture, the practice of which, although strictly prohibited, is often commonplace. This year, the International Federation of ACAT, which comprises 15 associations in Africa, the Americas and Europe, would like to call for a reaction against the trivialization of torture. In 1991, the associations affiliated to the International Federation had to make representations to the authorities of 91 countries in order to protest against flagrant violations of article 5 of the Universal Declaration of Human Rights. Those representations concerned 3,497 individuals, as well as the many members of groups subjected to collective repression, who formed the subject of blanket protests. Although the International Federation of ACAT does not interpret these figures as

evidence of an increase in the practice of torture, it is particularly concerned at the manner in which this practice is apparently being trivialized. In this connection, we would refer to just a few examples of situations or attitudes which reflect this trivialization.

2. The impunity which torturers enjoy in many countries implies that acts of torture are sufficiently commonplace to be virtually forgotten in the interests of so-called "national reconciliation". This trivialization of the crime of torture is prohibited by international instruments, particularly the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (arts. 4 et. seq.). The International Federation of ACAT calls on governmental authorities:

(a) To refuse to grant impunity to torturers, by excluding the crime of torture from any amnesty measure and by endowing the judicial authorities with the statutory and material means to enable them to discharge their task;

(b) To include (through texts and orally) in the training of members of the various law-enforcement agencies a reference to the fact that no person guilty of an act of torture may benefit from any amnesty whatsoever.

3. The manner in which some authorities justify the exceptional practice of torture leads to its trivialization. In fact, although the authorities may officially proclaim their condemnation of any act of torture, they frequently justify or acknowledge "exceptions". Many of the replies that the authorities send to associations affiliated to the Federation contain arguments conducive to dangerous trivialization. Violations are attributed to the fact that "the ill-treated individuals were terrorists" or it is stated that "criminals who place themselves beyond the pale of the law should not complain of repression". Some Governments explain that "the security of the State or its citizens sometimes necessitates the use of more radical means" or that "normal means cannot be used to obtain information from certain persons who have received special training".

4. The frequent use of such arguments, by the general public and by the authorities, constitutes a flagrant violation of the international rules which expressly stipulate that no exception may be made to the prohibition of torture (art. 2 of the Convention against Torture). It also denotes a grave failure to recognize the consequences of the use of such methods, which are always baneful for society as a whole. In his report for 1991, the Special Rapporteur on torture noted the grave dangers inherent in toleration of "the glaring discrepancy between behaviour at the international and national levels". He added that Governments "should learn to profit from history's lesson that internal order ultimately can never - or at best only temporarily - be restored and maintained at the cost of basic human rights".

5. The International Federation of ACAT calls upon the authorities:

(a) To continue training their officials in the requirements of international law through courses which the competent United Nations bodies could help to organize;

(b) To encourage the production of educational works conducive to the stimulation of wider public awareness of the reasons for the absolute nature of the prohibition of torture.

6. The evident reluctance of some authorities to ratify the international legal instruments prohibiting torture seems to indicate that torture is regarded not as a priority, but as a trivial concern that can be forgotten. The International Federation of ACAT therefore calls upon the governmental and political authorities:

(a) To ratify and give full effect in their country to the Convention against Torture;

(b) To encourage and accelerate the process of the study and acceptance by the United Nations of the Optional Protocol to the Convention against Torture, by deciding at the forty-eighth session to establish a sessional or presessional group at the forty-ninth session (1993).

7. Some of the most vital principles for the survival of mankind are being threatened by trivialization. Such is the case with the absolute prohibition of torture. It lies with each country to react against this dangerous trivialization.

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

RIGHTS OF THE CHILD

Written statement submitted by the International Federation of Action of Christians for the Abolition of Torture, a non-governmental organization on the Roster

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[8 January 1992]

"If murders and inhuman treatment of children are to decline, the perpetrators must be punished"

1. For some months now, the associations affiliated to the International Federation have been receiving numerous reports that thousands of children have been murdered and subjected to inhuman treatment, particularly in large cities. The reports have come from all continents, the most recent being from Brazil, Guatemala, Uruguay, India, the Philippines, Pakistan, Yugoslavia, Romania and Madagascar. Unfortunately, this list is not exhaustive. All over the world, on the pretext that these children commit crimes in order to survive, the authorities allow freedom of action for paramilitary groups or private militias which do not shrink from murder, torture and disappearance.

2. There are no easy solutions; economic, social, educational and legal measures are required at the continental and indeed world levels. The credibility of the nations' commitment to respect for human rights, however, demands that we should not wait for such decisions to yield results before taking action. There is one measure that can be taken right away by all authorities which would have an immediate effect, and that is to punish the perpetrators of these crimes.

3. World public opinion cannot believe that the authorities are not aware who the perpetrators are. It expects an immediate response. To take the situation in Brazil alone, in October 1990, 560 children's bodies were discovered in a secret graveyard in the west of Sao Paulo. According to Ivanir Dos Santos, Executive Secretary of the Centro de Articulaçao de Populacoes Marginalizadas and Child Counsellor for the State of Rio de Janeiro, the bodies of 492 murdered children were discovered on wasteland in 1990; he asserts that during the first nine months of 1991, 312 children were murdered in Sao Paulo. Crimes cannot take place on such a scale without the authorities locating the perpetrators. And yet it seems that impunity is the rule.

4. For more than a year and a half, the mothers of nine black children from the Acari favela (slum) in Rio de Janeiro have been struggling in vain to find out from the authorities what has become of their children, who left one day in July 1990 with two older companions to attend a party in Mage in Baixada Fluminense. There are rumours about the identity of the suspects, but the police and justice officials are refusing to do anything. On the evening of 14 November 1991, in the Nova Jerusalem favela in the town of Duque de Caxias, six children and teenagers aged between 9 and 16 were beaten and shot in the head. Their bodies were discovered with their hands tied behind their backs on the banks of the River Saraquí. One of the victims pretended to be dead and survived. Today his life is in danger because of the threats made against him; he can provide valuable information about the identity of the murderers.

5. In the face of these tragedies, which are an outrage to the human conscience, the local and national authorities must use every possible means to prosecute those responsible and must work closely with the non-governmental organizations that are helping to protect children. As a matter of urgency, they must provide effective protection for all who are working to ensure that the truth is established and that the guilty are brought to justice.

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Item 14 of the provisional agenda

IMPLEMENTATION OF THE PROGRAMME OF ACTION FOR THE SECOND DECADE TO COMBAT RACISM AND RACIAL DISCRIMINATION

Written statement submitted by Baha'i International Community, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[3 January 1992]

1. The Baha'i perspective on racism is based on the view that humankind is evolving towards a single social order whose boundaries will be no other than those of the planet. Prejudice, war and exploitation are the expressions of immature stages in a vast historical process leading to the inevitable unification of the human race. Thus, the recrudescence of racism in some countries in recent times represents a destructive and stubborn clinging to old patterns of behaviour and are part of the turbulence associated with the emergence of a world free from the scourge of racism and all forms of prejudice, marking humanity's coming of age. We believe that loyalty to humanity as a whole and consciousness of the oneness of humankind should be the guiding principle of the world community. The implications of this principle, therefore, should be explored in the three basic areas of human rights activity within the United Nations system namely education, standard-setting and monitoring. We offer the following observations and recommendations concerning each of these areas.

2. With respect to education about racism, it is important to emphasize that contemporary manifestations of racial discrimination are usually based on subconscious attitudes. In the Study on the achievements made and obstacles encountered during the Decades to Combat Racism and Racial Discrimination (E/CN.4/Sub.2/1989/8 and Add.1), the author observes that the contemporary problems of racism "are more clearly faced as social conflicts and as cultural and ethnic exclusion and rejection" although they have been shaped by "past pseudo-scientific theories and corresponding attitudes" (para. 438). Therefore, "ethnocentrism" and "racism", although they are distinct phenomena, often overlap. It is increasingly apparent that eradicating racism requires a more expansive consciousness of the oneness of the human race which, beyond the basic premise that we are one biological species, also incorporates social and spiritual criteria as a bulwark against "everything which enables people to consider themselves superior to others".

3. In order to eradicate racism, an "anti-racist" position is not sufficient in itself. It should be reinforced by a vision of a more advanced and unified society in which diversity is a resource and not a burden. Such a constructive approach should increasingly emphasize the deleterious effects of racism not only on its victims, but also on its perpetrators. In the words of the preamble of the 1963 Declaration on the Elimination of All Forms of Racial Discrimination proclaimed by the General Assembly in its resolution 1904 (XVIII) of 20 November 1963, "racial discrimination harms not only those who are its objects but also those who practise it". Indeed, we believe that racism not only "retards the unfoldment of the boundless potentialities of its victims" but that it also corrupts its perpetrators by depriving them of the benefits of diversity. In this connection, focusing attention on the prevention of discrimination against the most vulnerable groups in society, such as indigenous tribes and peoples, should be a matter of high priority.

4. In the area of human rights education, we highly commend the continuation of the activities of UNESCO aimed at implementing the 1974 recommendation of the general conference concerning education for international understanding, cooperation and peace and education relating to human rights and fundamental freedoms. In developing pedagogical material, it would be useful to explore ways in which parents can educate their children in their formative pre-school years when basic moral values are conceptualized. Guided throughout their early experience to understand and appreciate the principle of unity in diversity, the younger generation will adopt attitudes and behaviour which more fittingly express the nobility of the human race. Moreover, we would like to emphasize, as we have in the past, the importance of developing a universal yet culturally adaptable curriculum on the oneness of humankind, which will serve to neutralize racism's root causes as well as its particular manifestations. Such a curriculum should not only deal with moral values but also with the identification and development of human spiritual capacities. In other words, it is through a process of spiritual transformation at the individual and collective levels that moral values are incorporated into social life in a lasting and meaningful way.

5. In terms of standard-setting, various United Nations human rights instruments refer to aspects of the oneness of humankind. For example, the 1966 UNESCO Declaration of the Principles of International Cultural Cooperation, proclaimed by the General Conference of the United Nations Educational, Scientific and Cultural Organization at its fourteenth session, on 4 November 1966, states that "in their rich variety and diversity, and in the reciprocal influences they exert on one another, all cultures form part of the common heritage belonging to all mankind" (art. 1 (3)). Beyond the basic dual principles of non-discrimination against and protection of minorities therefore, this Declaration adopts the principle of cultural interdependence and the notion that society benefits as a whole from the contributions of its diverse elements which constitute an inextricable part of the "common heritage" of humankind. It may be useful to reflect and expand further on a dynamic notion of the "common heritage" as a foundation for a "common destiny" or "common future" of humankind leading to the unification of the human race in one planetary social order. This particular expression of the principle of the oneness of humankind could significantly influence the philosophical and juridical interpretation of human rights as well as the formulation and development of policy by the United Nations, Governments and non-governmental organizations.

6. In order to develop a viable world system capable of monitoring and enforcing human rights standards, including those aimed at eliminating racial discrimination, we believe that more States should be encouraged to accede to the first Optional Protocol of the International Covenant on Civil and Political Rights and also article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination. The right of petition by individuals to the Human Rights Committee as well as the Committee on the Elimination of Racial Discrimination should also be supplemented by other concrete measures aimed at strengthening United Nations action in the field of human rights through the principles of non-selectivity, impartiality and objectivity. The decision of the Economic and Social Council (resolution 1991/32) to interpret rule 59 of the rules of procedure of the functional commissions of the Council so as to allow the members of the Sub-Commission on Prevention of Discrimination and Protection of Minorities to "vote on resolutions pertaining to allegations of violations of human rights in countries by secret ballot", is a positive step in this direction.

7. The Third Decade to Combat Racism and Racial Discrimination, which coincides with the Decade of International Law, provides an auspicious opportunity to develop further measures aimed at creating more independent and impartial human rights bodies as part of an expanding world system of human rights. In the context of confronting extreme forms of racism, particular emphasis should be placed on developing effective mechanisms for the enforcement of the Convention on the Prevention and Punishment of the Crime of Genocide. Existing mechanisms are clearly indadequate and accordingly, we once again recommend the establishment of a Committee on Genocide to act as an impartial and universal guarantor of the rights contained in the Convention. We have previously elaborated upon the competence and structure of such a Committee and our recommendation is contained in the revised and updated Report on the question of the prevention and punishment of the crime of genocide prepared by Mr. B. Whitaker (E/CN.4/Sub.2/1985/6; see para. 85).

8. The Baha'i International Community has aspired, from its very inception, to transform society by engaging individuals in a process of reflection and action, based on the principle of the oneness of humanity. In the midst of the afflictions plaguing society in the nineteenth century, and while in exile because of his teachings, Bahá'u'lláh appealed to the peoples of the world to eradicate prejudice from their midst. His son summarized this appeal in these words:

> "O humankind! Verily, ye are all the leaves and fruits of one tree; ye are all one. Therefore, associate in friendship; love one another; abandon prejudice of race; dispel forever this gloomy darkness of human ignorance, for the century of light, the sun of reality hath appeared. Now is the time for affiliation, and now is the period of unity and concord. For thousands of years ye have been contending in warfare and strife. It is enough. Now is the time for unity. Lay aside all self-purposes, and know for a certainty that all men are the servants of one God who will bind them together in love and agreement." 1/

1/ Bahá'u'lláh, cited by Abdu'l-Bahá, The Promulgation of Universal Peace, 1982 edition, p. 322.

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EFFECTIVE FUNCTIONING OF BODIES ESTABLISHED PURSUANT TO UNITED NATIONS HUMAN RIGHTS INSTRUMENTS

Written statement submitted by Four Directions Council, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[6 January 1992]

THE RIGHT TO PARTICIPATE IN PUBLIC AFFAIRS - A CONFUSING HUMAN RIGHTS COMMITTEE DECISION ON ARTICLE 25

1. We have the honour to circulate the following document, on behalf of the Sante Mawa'iomi wjit Mikmaq (Mikmaq Grand Council), concerning the decision of the Human Rights Committee in Marshall (Mikmaq Tribal Society) v. Canada No. 205/1986 (CCPR/C/43/D/205/1986), on 4 November 1991. We note that the Marshall case was originally submitted to the Committee in 1980, and that Kjisakamou Donald Marshall died in 1991, a year before the Committee made its decision - which was against him and his people. We also note that this matter has been discussed in some of the public sessions of the treaty bodies, and that the Mikmaq Grand Council advised the Commission on Human Rights of its accession to the Covenant on Civil and Political Rights in document E/CN.4/1988/NGO/37.

Background

2. The Mikmaq people are the original inhabitants of the Atlantic sea coast of Canada, which we call Mikmakik. We first heard about Europe from Norse explorers, who stayed with us in the eleventh century, and from Basque sailors, who fished with us in the fifteenth century. Between 1532 and 1752, we were trading partners and allies of France, and we became Catholics in 1610 under the terms of a treaty (or concordat) with the Holy See. In 1752, we entered into a treaty with Great Britain, which in 1985 the Supreme Court of Canada held is still in force and effect in that country. Under the terms of the treaty, we became subjects of the British Crown, but retained our own lands and traditional national government, which is the Grand Council.

3. In 1944 the Government of Canada "centralized" our settlements, in 1960 it divided us involuntarily into separate "bands" or communities, and in 1970 it purported to extinguish our fishing rights, on which we had always depended for our livelihood. In 1978 we submitted a claim for recovery of our lands and fisheries to the Government of Canada, but it was rejected on the pretence that all of our traditional rights had been "superseded by law". This compelled us to submit our claims to the Human Rights Committee, in 1980.

4. In 1982, Canada amended its Constitution to include, inter alia, a new article reaffirming "the existing aboriginal and treaty rights of the aboriginal peoples of Canada". From 1983 to 1987, the Government of Canada convened a series of constitutional conferences to negotiate a further amendment, clarifying the meaning of this phrase. The Prime Minister invited four non-governmental organizations to represent all of Canada's more than 40 original peoples. We asked to participate in these conferences on the basis of our recognition, by treaty, as a distinct nation, but we were refused. This denial was the basis of our revised communication to the Human Rights Committee in 1986.

5. The question before the Committee in Marshall, then, was whether a State may negotiate changes in the constitutional rights, or treaties, of an indigenous people, without that people's direct participation in the decision.

Decision on admissibility

6. The Committee's decision on admissibility (CCPR/C/39/D/205/1986) stated in paragraph 14.6 that:

> "The Committee believes that there are certain questions of law and facts relating to article 25 (a) of the Covenant that can only be determined on the merits. The Committee will have to address the issue whether or not the constitutional conference constituted a 'conduct of public affairs' and whether the right under article 25 (a) is available only to individual citizens, or to groups or representatives of groups also. In this context, the Committee would wish to know, in particular, the precise legal nature and scope of competence given to the constitutional conferences, as well as the criteria for participation therein."

Thus, the Committee ruled that the scope of the Mikmaq people's rights to participate in Canada's constitutional negotiations "can only be determined on the merits", that is, on the basis of the actual facts.

Decision on the merits

7. In its final views, the Committee stated as a general principle of law (paragraph 5.5):

> "Invariably, the conduct of public affairs affects the interests of large segments of the population or even the population as a whole, while in other instances it affects more directly the interest of more specific groups of society. Although prior consultations, such as public hearings or consultations with the most interested groups, may often be envisaged by law or have evolved as public policy in the conduct of public affairs, article 25 (a) of the Covenant cannot be understood as meaning that any directly affected group, large or small, has the unconditional right to choose the modalities of participation in the conduct of public affairs."

The Committee then concluded (in paragraph 6) that Canada's refusal to admit Mikmaq representatives to its constitutional conferences did not constitute either "discrimination" or an "unreasonable restriction" on the right of Mikmaq people to participate in public affairs.

Interpreting the decisions

8. The Committee's final decision appears to be inconsistent with its prior decision on admissibility, which stated that the right of groups to be represented in public decision-making is a question of fact to be determmined in each case. The Committee now appears to think that such rights do not exist under article 25 in any case as a matter of law.

9. Paragraph 5.5 denies the existence of any general right of groups to collective representation, while paragraph 6 implies that there is a right to be free from "discrimination" or "unreasonable restriction" in the exercise of the right to participate in the conduct of public affairs. Do these two statements, read together, mean that the Mikmaq (and other groups) have a "conditional" right to participate directly in the conduct of public affairs, the conditions being that the manner of their participation be "discriminatory" or "unreasonable"?

10. If a State party organizes the modalities of participation in such a way that certain groups, although affected, have no meaningful voice in the decision, is this not "discrimination"? Or if the State party arranges consultations so that some of the affected groups are invited while others are excluded, is this not "discrimination"? Does the phrase "unconditional right to choose the modalities of participation" mean that, when a group does have the right to participate in public decision-making, it is the State and not the group itself that has the right to choose the group's representatives?

11. Since Canada's constitutional conferences were aimed at redefining "aboriginal and treaty rights", they affected us, not as citizens (if such we are) but as an indigenous people in a treaty relationship with Canada. In

effect, participants in the conferences were renegotiating the treaty which governs the relationship between Mikmaq and Canada. Is it "unreasonable", in the light of these undisputed facts, to exclude Mikmaq from these negotiations?

12. The Committee's views could be interpreted as leaving the specific processes or "modalities" of participation entirely to the discretion of State parties. This, we believe, would be tantamount in effect to deleting article 25 (a) from the Covenant.

13. The Committee's decision implies that indigenous peoples have no right to representation, participation or self-government, other than those rights generally enjoyed by citizens. This is incompatible with the ILO Convention on Indigenous and Tribal Peoples in Independent Countries, 1989 (No. 169), and with the recognition of the special and collective character of indigenous rights by the General Assembly - most recently in its resolution 45/164, proclaiming the International Year for the World's Indigenous People.

14. We believe it is necessary for the Committee to clarify its views on article 25, in particular what is meant by "discrimination" in this context, and by "unreasonable restrictions", and we have communicated this concern to the Committee. In light of the extreme importance of democracy and the principle of "consent of the governed" to the global achievement of human rights, we also believe it would be for the best interests of all countries to seek clarification of the interpretation of article 25 from the International Court of Justice.